. THE QUARANTINE IMBROGLIO.

Judge Metcalfe's Decision Hr. Ray Tempkins and J. C. Thompson Discharged—The Buildings a Nuisance—

No Proof of Arson,

Judge Metcalfe rendered his decision yesterday in the rotracted case of arson which was held before him in ptember last, at Stapleton, Staten Island. Yesterday Mr. G. H. Anthon as counsel, together with Mr. Tompkins and J. C. Thompson, the parties charged,

ppeared, when Judge Metcalfe, after a few remarks, ren-On the nights of the 1st and 2d of September last, the

Quarantine buildings of the port of New York, situate in he village of Tompkinsville, were consumed by fire, which human agency intentionally communicated. The prisoners are charged with the act and are arraign-

ed for arson, without actually confessing but certainly without very strenuously denying any agency. They allege that the Quarantine, as it was and had for a long time been conducted, was a public nuisance, dangerous to the health and in many cases fatal to the lives of the commued of were done in obedience to a great public nessity, by which the actors are exonerated from all blame.

nakes it the duty of the magistrate, if he shall be of the ion that a crime has been perpetrated, and that there probable cause to believe the prisoners guilty of it, to ommit them. On the testimony there can be no difficulty in believing that the prisoners were probably either The arson is charged to have been committed on build

ings. But it could not be arson in the first degree, because, bough some of them were inhabited dwelling houses, and although they were burned in the night time, yet the any human being. Nor do I see any reason for supposing

although they were burned in the night time, yet the groof fails to show that there was in them at the time any human being. Nor do I see any reason for supposing the property to be that which is made the subject of arson in the record degree. The statute which seems to cover the present case is that which enacts that "every person who shall wilfully set fire to or burn in the night time the house of another, not the subject of arson in the first or second degree, " * any public building belonging to the people of this State, or to any county, city, town or village, * * shall, upon conviction, be adjudged guilty of arson in the third degree." (2 R. 8. 667, s. 4.)

The preperty in question seems to have belonged to the Commissioners of Emigration, but whether in their own right or in trust for the State or the city of New York is not quilt clear, nor is it material to inquire, for the people have extended the same protection over the property of individuals and corporations as over their own, nor is there any mention of hospitals as such. They are protected only as they fall within the general words of the statute. And it is arson to burn them only which the same words embrace.

And this is whenever the act is wilfully done. I have already said that it was done intentionally; but wilfulness implies makine, and makine is inferred from the intention, unless it be disproved. Has this disproof been furnished? I think it has. The grounds of the Marine Hospital he in Tompkinswille, and are bounded on the west and south by public highways, the opposite sides of which are closely occupied by dwellings, and that on the south terminates at the wharf used by the New York ferry, and is often, particularly on the arrival and doparture of the beats, thickly crowded with passengers. To the north, and immediately adjacent to the grounds, lies New Brighton. On the south of Tompkinsville as Stappleton, with Clifton beyond. These four villages—or rather one large village with four names—are a long, narrow, thickly peoples bedt, ex

It is the evident intention of the health laws of the city— an intention which has been carried into effect with con-siderable fidelity—that on these grounds should be con-centrated everything, whether living or dead, which is taken from infected vessels and neither destroyed nor fit to be conveyed into healthy communities. Here infected baggage is landed and opened to the air; here infected vessels discharge and fre-

infected baggage is landed and opened to the air, here infected vessels discharge and frequently deposit their infected cargoes, sometimes as many as three being at the same time and same wharf unicading; here infected clothing is washed; here the passengers, and, I suppose, also the crews of the infected vessels serve out the probation which is to determine whether the receds of disease shall germinate in sickness or death, or fail to germinate; here are gathered or huddied all who have sickened of pestilential diseases, whether in the city or on shipboard, to be cured or to die here, finally, all who perished on shipboard of the plague, or of diseases in the nature of the plague and not thrown over at sea, were brought for burial.

The extent of these accumulations on these grounds is not shown by direct proof. But in 1856 there were one hundred and fifty vessels at one time in quarantine for infectious diseases. The aggregate is not stated. From this may be formed some idea, however inadequate, of the quantity of infected clothing, of infected cargoes, the number of infected sailors and passengers, of the sick and the dead the present year, when, as it. Thempson, the Health Officer of the port, to stines, the infinite of vestions and his family, the Bedring of the various hospitals and his family, the Bedring of the various hospitals and his family, the bedring of the various hospitals and his family, the bedring of the various hospitals and accessed in extent some twenty-five or twenty-eight and his family, the health officer, the physicians framiller, resided on the grounds, which does exceed in extent some twenty-five or twenty-eight and accessed in extent some twenty-five or twenty-eight and accessed in extent some twenty-five or twenty-eight and accessed to the prince of the prince o

by water, both is conveyances forsished for despuring the account of the contraction of t

mest of them lived within the hospital enclosure, their dwellings were so constructed that they had to pass into and along the public highway many rods to enter them. And it is equally certain that as to the stevedores, whose business was to unload infected eargoes, whether passes were granted to them or refused, it was all the same, for skevedore leaves a boat unlocked, sometimes we would get a pass from 1r. Thompson, Dr. Waller or Dr. Walser sometimes we could not, and then we would get out by a boat, if we wanted to go badly." He got out once a week, and then begeneral never more than three times, sometimes offener, but never more than three times, seek, and then begeneral never than three times, week, and then begeneral to me miles distant. All the persons living on the proton for miles distant. All the persons living on the proton for miles distant. All the persons living on the proton for miles distant. All the persons living on the proton for miles distant. All the persons living on the proton of the proton of the persons living on the proton of the persons of the persons

this summary act of self protection, justified by that necessity, and therefore by law, was resorted to only after every other proper resource was exhausted.

There is also another ground of justification. On the first day of September the Board of Health of Castleton adjudged the quarantine buildings to be a nuisance, and called on the people of Castleton and the county to abate that nuisance without delay. The power to render such a judgment is contained in the power and duty of making "regulations in their discretion concerning the suppression and removal of nuisances, and such other regulations as they shall think proper and necessary for the public health." This was in its nature a judicial act. The Board had jurisdiction of the subject matter by the terms of the statute, and their judgment was conclusive. The prisoners did the acts complained of in obedience to this judgment. On the common principle, therefore, that a person other than a party acting under a judgment of a tribunal having jurisdiction over the subject matter will be protected, the prisoners must be held not guitty. In Van Wormer vs. the Mayor, &c., of Albany (15 Wendell), it was held, in action of trespass for carrying into effect a similar decree, founded on exactly the same language of the act, that it could not be shown in opposition either that the alleged nuisance did not exist, or that the owner of the property had no opportunity to be heard before the Board, but that the judgment was conclusive as against all collateral review, and was a protection to the defendants. (See also 2 Denio, 476.)

There is yet another ground on which the prisoners should be discharged. On the testimony there is, I think, no doubt that the Quarantine establishment, situated where it was, necessarily and must always be a nuisance of the most aggravated character. Eleven physicions were examined on the question whether that ostablishinhment could be so conducted as to be safe to the people on the adjoining shores of Staten Island and Long Island. They had a

were strictly enforced. This testimony was strongly corroborated by the fact that fever had always appeared on the outside of the Quarantiae walls whenever it exhited to any extent within; that in the years 1848 and 1856 there were upwards of four hundred cases, and about 175 deaths; and that on the first of September and for some time previous the infection was on the anchorage ground and in the hospitals in great quantities, and had broke out with violence among the people; that the danger to public health was great and imminent, and that this danger and all the cases that had occured were, and all that might occur must be, the certain and nevitable effect of the sixtute placing the establishment in that to-cality. These statutes did therefore "deprive" many more, and threatened and would inevitably "deprive" many mere men, of their lives without due course of law, and were wholly inoperative to take away from the people of Castieton and among them from the prisoners the common right to destroy property which endangers life in a pestilence. Nothing is more carefully guarded by our institutions than the personal equality of all men in the right of life, liberty and property. This is the office of government, and where it is well discharged its duties are all done. Outside of the domestic relations and after the period of infancy no one man can be compelled via data to serve another, or part with his property or history or life for his beneat.

Not only are men time equal as to these rights to mark each other, but they are "equal as between them, liver and the government. The Sche cannot take the property of personal another. The property of no man can be chapted of his liberty, no man of life, unless it be adjudged against him by the courts on laws previously made; in other him by the courts on laws previously made; in other

most soiemn form, waive the right of the State that he shall not be deprived of the without one course of law, which in this case means a trail by twelve instead of law, which in this case means a trail by twelve instead of law, which in this case means a trail by twelve instead of law, which in this case that the constitutional inhibition against the state inhibited that the constitutional inhibition against staking life without due process of law is not only a bulwark for the individual against the legislature and against the state, but also a bulwark of the State not merely against the legislature and all other men, but against the individual himself.

Nor does the constitution, when it forbids life to be taken without due process of law and "except incidentally?" for that would make void the prohibition, because life cannot be destroyed except as the uncident of some other act, to which death is an incident. Hanging, shooting, immersion in medical menders of the state of the conducted. Death is but incidental to the death is an incident to such a case of a housand other things, and the constitution prohibite none of these hings, but it prohibits the doing them in such a manner that according to the known nature of each death will ensue. It prohibits the end and every means to that end except one—due process of law the prohibition covers every thing else.

Nor does the constitution tay "except in cases of necessity?" for who is to judge of the existence or measure of the necessity? If the Logislature, if individuals, if the State itself may kill whenever it is thought necessary, then killing is a matter of mere discretion. But, on the contrary, that man who has wifully done an act which the law has said the man who did it should die, may after indictinent in the county, trial by twelve of his poers, after being consonies with the withease against the contrary that may not be able to the passage of the Court, be killed in the way the in w shall bave previously ordained, and in no other way. Every other nan be

the control the Durit, the Milde in the way the few shall also generated by the Control and the control of the

has to death," and occause the latter could not be done, the former was desired.

Condombtedly the city of New York is entitled to all the protection in the matter that the State can give consistently with the health of others. She has no right to more. Her great advantages are followed by correspondent inconveniences; her great public works by great expenditures; her great foreign commerce by the infection it brings. But the Legislature can no more apportion upon the surrounding communities her dangers than her expenses, no more competition to do the dangers than her expenses, no more competition to do the dangers than her expenses, no more competition to do the dangers than her expenses, no more competition to do the dangers than her expenses, no more competition to do do do the dangers than her expenses, no more competition to do do a danger than to pay her taxes—belther can be done. Nothing in Harris vs. Thompson, 9 larb., 350, militated against these views. The subject of the constitutional inhibition against taking life but by due process of law does not seem to have been alluded to; and surely a case, whatever it may decide, can be no authority on a question not mentioned by coursel or considered by the Court. It is undoubtedly true that "nothing which the law sections can be a nuisance." But where the legislature authorizes or communist that which the constitution forbids, its statutes are not law, and cancion nothing.

For all these reasons I think the primaries themle her of law, and canction nothing.

For all these reasons I think the prisoners abould be

discharged.

Mr. Authon, the counsel of the defendants, was loudly cheered on his way to the ferry.

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The Mayor's Thanksgiving Proclamation. Whereas the Governor of the State, in accordance wit time benored and most laudable custom, has appointe fluorsday, the 18th day of November 11st, to be observe as a day of general thanksgiving and prayer, now I, Iwang T. Temann, Mayor of the city of New York, do hereby a celly recemmend all good citizens to ank on that day The frigate Sabine arrived at Bermuda on the flat uit, having, in a hurricane on the 24th lost maintopeail and press and thanksgiving to Aimighty God for all the great and manifest blessings he has bestowed in his good with the commercial panic which recently prestrated the trade and industry of our city has subsided, and again the merchant is busy, the mechanic employed, and the laborer has work to do. The harvesigs of the country have been plentious, affording to our people the fruits of the earth in abundance, so that all can enjoy them. Pestilence has not been permitted to visit us; but beyond any previous season has our city adjoyed the blessings of health. And even the strikes of party have served to the maintenance of that Union by which we as a people are secured in our civil freedom and the right to worship our Creator according to the dictates of our own consciences. For these and other manifold blessings and mercies, a is our duty at all times to be thankful to the Giver of all Good, but especially on a day thus set apart by the Chief Magistrate of the State for religious worship and praise.

I would also recommend that on this occasion those who have been favored with prosperity should impart of their comfort and allevisting their distress, bottor their comfort and allevi

Important Arrest of Counterfelters.

LARGE HAUL OF COUNTERFEIT MONEY, TOGETHER WITH PRESSES, DIES, ETC., ETC., USED FOR MANU-PACTURING SPURIOUS COIN-OVER \$30,000 WORTH OF THE BOGUS MONEY RECOVERED, TOGETHER WITH \$1,000 IN COUNTERFEIT BILLS ON VARIOUS BANKS-THE HEADQUARTERS OF THE GANG IN BROOKLYN, ETC.

One of the most important arrests that has ever been made by the police of this city, and which involved a large amount of spurious coin, was accomplished by four of our New York officers yesterday, to whom is due a great deal of praise for the manner in which they have, for over three months, worked to arrest the counterfeiters and secure the materials with which they carried on their unlawful trade. The implements, consisting of dies, plates, presses, &c., are the most extensive and expensive that have ever been recovered. The successful breaking up of the establishment is of vital importance to the public, and will, no doubt, be the means of saving handreds from being swindled by having spurious coin

The concern in itself was a perfect mint, and has been the headquarters of the like business for a long time, thou-sands of dollars having been put in circulation; and it would have, without doubt, been carried on unmolested, had not the officers, who so faithfully followed it up, succeeded through their strenuous efforts in tracing the ringleaders to their headquarters.

It appears that about three months ago Capt. George W. Walling, of the detective force, learned that there was a large amount of counterfeit gold and silver coin, as well as counterfeit bills, manufactured somewhere in the city of New York or neighborhood, and sold to various

for three days, and I am most happy to state to you that the Harrist Lane proved herself to be one of the best sea vessels of her class now adeat. I shall commence coaling as soon as possible, and think I will be ready for sea again in three days. I found here the United States steamers Fulton and Water Witch, which sailed from Norfolk on the 5th, and belong to the expedition. Not finding the coal required here, some delay may be caused thereby. In great haste, I am, sir, very truly, your friend,

JOHN FAUNCE.

Hon. Accesses Science, Collector of Customs, New York.

United States Strangs Hargist Lang, Carliser Bay, Barbanoss, Oct. 21, 1858.) My Drar Captain—As an American bark sails for No. writing you a line to advise you of our safe arrival here We made the harbor the night before last, and came to an We made the harbor the night before last, and came to anchor early yesterday morning. The Fulton and Water Witch are both here, they having sailed from Norfolk four days before we left New York. We have beaten them both nearly two days. We had a strong gale from southeast, with heavy sea to contend against for three days, in which the Lane has proved herself a first class sea boat, and fast. The vessel with our coal arrived an hour after us, having sailed from Philadelphia on the latinstant. We leave here for Pernambuco as soon as we coal and water ship. With kind regards to your family and the mess, I am, as ever, my dear Captain, yours sencerely.

D. G. CONSTABLE. ARRIVAL OF THE PRIGATE SABINE AT DERMUDA

ETC.

ARRIVAL OF THE ASIA.

THREE DAYS LATER FROM EUROPE. INTERESTING FROM JAPAN.

United States with that Empire. Opening of the Eastern World to Modern

The New Treaties of England, Russia and the

Civilization and Trade. Important Russian Conquests in Asia.

THE FRENCH DISPUTE WITH PORTUGAL.

THE IRISH ATLANTIC STEAMERS

THE OCEAN CABLE,

at half past eight o'clock yesterday morning. She left Liverpeol at three o'clock the afternoon of the 30th ult., three days later than the Kangaroo.

Among the passengers by the Asia are Mr. George Mock and family; they proceed to Richmond, Va. Mr. Mook is appointed British Consul at that place, vice G. P. R. James, promoted.

The political event of the week in England had been a great demonstration at Eirmingham in honor of Mr. John Bright, member of Parliament from that town and the delivery by that gentleman of a telling speech on the subregarded as indicative of the policy of the extreme radicals, and, as such, attracted great attention. He sulogized the elective franchise, as practised in the United States, the equal distribution of representation and the ballot, and pledged himself to support a reform bill for such a not generally acceptable to the great bulk of the press. The Manchester Guardian takes decided exception to his laudation of American institutions, and the law and order which he contended prevailed under them.

Consols closed at 98% for money, and 98% for account. The builton in the Bank of England had decreased during the week to the amount of £144,000. The money market was generally unchanged.

ing the 27th of October gives the following results: when compared with the previous week :-

 Public deposits
 C6,130,265
 Increase
 £598,707

 Other deposits
 13,331,992
 Decrease
 476,354

 Rest
 3,100,999
 Increase
 3,389

On the other side of the account:-

Govern't secu's, £10,809,467 The same as before.
Other securities, 14,780,137 Decrease. £31,983
Notes unempt'd, 11,780,000 Increase 118,355
The amount of notes in circulation is £21,224,860—being

a decrease of £271,305; and the stock of bullion in both departments is £19,132,476-showing a decrease of £144. 084 when compared with the preceding return.

The following is the official return of the imports and exports of the precious metals for the week ending the

The complete prospectus of the Great Ship Company, formed for the purchase of the Great Eastern Steamer, had been issued, and a meeting of the old shareholders convened for the 1st of November, to make the final arrange-

ment for the transfer of the vessel. The London Daily News says :-

A steamer built for the Egyptian government in the United States is a failure, as far as speed isconcerned, and it is expected she will be brought to Southampton in the spring to have her speed increased.

The chees players of Mauchester proposed to invite Mr Morphy to a public dinner previous to his departure for

the presidency of the Earl of Charlemont, the prizes to consist of sums of money to be expended in the purchase from this country.

The litigated point between the French and Brazilian governments with respect to the boundaries of French Guiana, will, it is said, be decided in favor of France, on the strength of certain documents lately discovered in the

journal entitled the Correspondent has been seized for an article by Count Mentalembert on England and India, and that a prosecution is to be instituted against the writer and publisher, who are accused of attacks against the which the Emperor is invested with by the constitution with respect to the laws. They are further charged with

government, and endeavoring to disturb the public peace.

The French Minister of Marine has, in consequence of
the approaching expedition to Cochin China, commanded
the establishment of a regular service of steamboats be-

tween the Bay of Japan, Hong Kong, and Canton.
In consequence of the great and progressive deterioration of silk worms in Europe, two Venetians interested in the silk trade-Counts Freschi and Castellani-have de management of the silk worm in those aboriginal coun-tries, and to bring home a quantity of spawn from the best plantations, in order, if possible, to improve the breed at home. The Governor-General of Lombardy has sked the French government to patronise this spirited pilgrimage, and the Minister of Commerce has strongly recommended it to the consideration of the silk growing districts of France. MM. Freschi and Castellani hope to

return from their journey by the end of next year.

A Paris correspondent of the Nord states that numerous French missionaries, men and women, have left during the last few months. Ten members of the Society of Mary have left for New Caledonia; a bishop and ten members of the same society for the Oceanic missions; thirty one members of the Society of Picpus for Tahiti, Sandwich Island ., Valparaiso, Santiago, Lima, &c.; two monks and two nuns for North America; and twenty-one pricets of the Society of Foreign Missions, for China.

The musical world at Dresden are expecting a new opera by the Duke of Saxe-Coburg Gotha, who labors promised work is "Diani di Solanges."

M. D. Lamartine, in a recent letter to M. Philoxene course of three months, produce the sum necessary for the payment of his creditors, he shall abandon France.

The Paris municipality have offered Rossini a most eligible site, planted with full grown trees, in the delightful suburb of Passy, where he is about to construct an Italian villa. The macure had found his native Bologna insufferably dreary, dismal and dull; nor is that to be wondered at while the present nightmare suffocates all numan activity in that devoted town. He tried Florence; but that city he found a vast caravansera of passing strangers, without a permanent circle of social enjoyment Paris has fulfilled all his requirements, and he crects his tent in that metropolis of taste, refinement and intellectual well as artistic cultivation.

dignities and neglect of which Chateaubriand is the obiect. In the recent visit of the Court to Brittany her illustrious son was studiously forgotten, and now it ap pears the old woman, who was the custodian of this tomb on a rock at St. Malo, has died of the rheumatism, and his grave will be a prey to English tourists, who chip off

all sorts of depredations.

The banquet recently given at Marseilles to M. de Lesneps was splendid. Four hundred persons were invited; omprising the slite of the commercial community. The grand ball where the banquet took place was filled with spectators, while the clubs, the Bowse and the other commercial establishments were liburdicated. At the banquet. M. de Lessepe stated, in reply to a teast-" That the